

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
ILLINOIS COMMERCE COMMISSION,) No. 06-0526
On Its Own Motion,)
)
Consideration of the federal)
standard on time-based)
metering and communications in)
Section 1252 of the Energy)
Policy Act of 2005)

Chicago, Illinois
August 22nd, 2006

Met, pursuant to notice, at Chicago.

BEFORE:

MR. DAVID GILBERT, Administrative Law Judge

APPEARANCES :

SONNENSCHN, NATH & ROSENTHAL, by
MR. JOHN E. ROONEY
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for ComEd;

ILLINOIS COMMERCE COMMISSION, by
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6 for South Beloit Water Gas & Electric;

7 MR. EDWARD FITZHENRY via telephone
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9 for Ameren Company;

10 MS. SUZAN M. STEWART via telephone
MS. KAREN M. HUIZENGA
11 One River Center Place
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13 for MidAmerican Energy Company;

14 MR. SCOTT DEBROFF via telephone
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15 for Elster Electricity and Cellnet Technology.

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- direct</u>	<u>Re- cross</u>	<u>By Examiner</u>
None .					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
None .		

1 JUDGE GILBERT: Pursuant to the authority of
2 the Illinois Commerce Commission, I now call Docket
3 06-0526.

4 If I can have appearances for the
5 record, please. Let's begin with ComEd.

6 MR. ROONEY: Thank you, your Honor. On behalf
7 of Commonwealth Edison Company, John Rooney from
8 Sonnenschein Nath & Rosenthal, LLP, 233 South Wacker
9 Drive, Suite 7800, Chicago, Illinois 60606.

10 MR. HARVEY: Appearing for the Staff of the
11 Illinois Commerce Commission, Matthew L. Harvey and
12 Michael R. Borovik, B-o-r-o-v-i-k, 160 North LaSalle
13 Street, Suite C-800, Chicago, Illinois, 60601.

14 JUDGE GILBERT: Okay. Those appear to be all
15 the appearances here in the room. If I can have
16 telephone appearances, please.

17 MR. MOORE: John Moore, Environmental Law and
18 Policy Center, 35 Wacker Drive, Suite 1300, Chicago,
19 Illinois, 60601.

20 MS. MOORE: Appearing on behalf of Interstate
21 Power and Light Company, South Beloit Water Gas &
22 Electric and --

1 JUDGE GILBERT: Whoever is speaking now will
2 have to speak a bit louder.

3 MS. MOORE: Appearing on behalf Interstate
4 Power and Light Company in South Beloit, Water Gas &
5 Electric, Jennifer Moore, 200 First Street Southeast,
6 Cedar Rapids, Iowa, 52402.

7 MR. FITZHENRY: Edward Fitzhenry on behalf of
8 the Ameren Company. My address is 1901 Chouteau
9 Avenue, Post Office Box 66149, Mail Code 1310,
10 St. Louis, Missouri, 63166-6149. My telephone number
11 is (314) 554-3533.

12 MS. STEWART: Suzan M. Stewart and Karen M.
13 Huizenga appear on behalf of MidAmerican Energy
14 Company. Our address is One River Center Place, 106
15 East Second, PO Box 4350, Davenport, Iowa, 52808.
16 Telephone number (563) 333-8006.

17 JUDGE GILBERT: Miss Stewart, I heard your
18 name. I didn't hear the second name.

19 MS. STEWART: Karen M. Huizenga, and that's
20 H-u-i-z-e-n-g-a, and Suzan is S-u-z-a-n.

21 JUDGE GILBERT: Thank you.

22 Are there any other appearances by

1 telephone?

2 MR. DEBROFF: Yes, there is. Scott DeBroff,
3 D-e, capital B as in boy, r-o-f-f, like in Frank, on
4 behalf of Elster Electricity and Cellnet Technology.
5 Do you want the whole address including the firm name
6 or no?

7 JUDGE GILBERT: Could you spell the names of
8 your clients again, please.

9 MR. DEBROFF: Sure. Absolutely.

10 It's Elster, E-l-s-t-e-r, Electricity,
11 LLC, and those are meter technology companies. The
12 second company is Cellnet, C-e-l-l-n-e-t, Technology,
13 Inc.

14 JUDGE GILBERT: Okay. Are there other
15 telephone appearances?

16 Okay. Those are the appearances then
17 for today.

18 Let's go over the interventions. The
19 only Petition to Intervention I've seen is by ELPC.
20 Are there any others?

21 All right. Is there any objection to
22 the participation of the ELPC?

1 MR. HARVEY: None from Staff, your Honor.

2 JUDGE GILBERT: Okay. There are no objections.
3 The ELPC is permitted to intervene in the case.

4 Do I have to do any pro hac vice
5 motions? Any out-of-states attorneys not --

6 MR. DEBROFF: Your Honor, this is Scott
7 DeBroff, again. There is a possibility we're -- both
8 clients are looking at their participation in
9 Illinois and that they would, indeed, have to --
10 they'd want full-party status.

11 I spoke to Mr. Harvey the other day
12 and I admit that that probably is the only way to do
13 that. So for, you know, probably the next couple of
14 days we'll gauge their level of interest and that
15 that would be the case. And that's probably exactly
16 what I would have to do.

17 MS. STEWART: Your Honor, this is Suzan Stewart
18 for MidAmerican. Miss Huizenga is on vacation this
19 week. I am not licensed to practice law in Illinois,
20 but she is. And so I'm basically filling in for her
21 today.

22 JUDGE GILBERT: Okay. Well, it sounds like I

1 don't have any motions to address, and you can
2 certainly participate today. And we'll see what we
3 need as the case develops.

4 With respect to Mr. DeBroff, where are
5 you calling from?

6 MR. DEBROFF: I'm actually calling from Paris,
7 Pennsylvania, your Honor.

8 JUDGE GILBERT: All right. And I assume you're
9 not a member of the Illinois Bar?

10 MR. DEBROFF: I am not currently, no sir.

11 JUDGE GILBERT: Are your clients formally
12 intervened?

13 MR. DEBROFF: Well, that's what I -- I stated
14 that they -- at least one of the two, I believe, has
15 a scheduled interested in doing so, the other may
16 after today. And so, you know, I intend to move very
17 quickly to do that if they do intend to -- want a
18 full-party status. So that's what I need. I need to
19 consider that with them, and then we'll get back to
20 you.

21 JUDGE GILBERT: All right. Well, you can
22 certainly participate today. I can't accord you

1 party status yet, do not ask for it.

2 MR. DEBROFF: Absolutely.

3 JUDGE GILBERT: Okay. That's fine.

4 MR. DEBROFF: Appreciate it.

5 JUDGE GILBERT: I had some thoughts and
6 questions about the case which probably reflect that
7 I'm new to some of these issues. It may be that some
8 of the folks either here in the hearing room or on
9 the telephone have actually participated, even in
10 Washington, in some of this legislation. I don't
11 know. So I've tried to catch up upon returning from
12 vacation and have some thoughts about the case, but
13 I'm not sure if they're very well-formed at this
14 point.

15 Did anyone come in with an agenda here
16 to how they'd like to proceed, and if they have, I
17 would like to hear that.

18 MR. HARVEY: Staff has a rather -- I wouldn't
19 necessarily characterize it as an agenda, but we have
20 some thoughts about the procedural vehicles that
21 might be appropriate here. It seems to us that this
22 is not a matter that necessarily calls for a, you

1 know, a contested evidentiary hearing. And it might
2 be appropriate to proceed by way of filed comments.

3 I have not floated this with the
4 parties and it is my understanding under our rules
5 that any decision to proceed on paper would have to
6 be the consensus of the parties. But that is what I
7 would propose, at least as a vehicle for proceeding.

8 MR. MOORE: I --

9 JUDGE GILBERT: I'm sorry. I didn't hear that.

10 MR. MOORE: Yeah, I have a question. John
11 Moore, Environmental Law and Policy Center.

12 JUDGE GILBERT: Sure.

13 MR. MOORE: And I don't know how much detail we
14 want to get into on the record on this involving the
15 different procedural vehicles, I would just state
16 ELPC's general concurrence with the idea this would
17 be a rule making proceeding, and I don't know all
18 that it entails. And I'm not sure why the parties
19 all (inaudible) said that. It's my understanding
20 what a rule making procedure is is that it's
21 something that the Commission would note at the
22 Illinois Register.

1 We have a commentary final rule -- and
2 a proposed rule commentary -- final rule. I believe
3 it's exactly the kind of proceeding that we don't --
4 contest the case, vehicle (inaudible) forward with,
5 but I like the schedule.

6 I know the Commission doesn't do many
7 of them. I think this is one where it makes sense.
8 And I just generally on issues like this and a couple
9 of the other dockets -- for example, the
10 interconnection docket that's pending before another
11 ALJ -- the problem I found in Illinois and in other
12 states. When you have a contested case you need
13 everyone to appear with an attorney when so many of
14 the issues are actually technical issues and apply to
15 a wide number of people. And it makes it harder for
16 nonattorney parties to participate.

17 JUDGE GILBERT: May I ask the court reporter,
18 were you able to hear enough of that to get an
19 accurate transcript, do you think?

20 MS. COURT REPORTER: Yes, I'll try.

21 JUDGE GILBERT: Okay. Mr. Moore, if you speak
22 again, and I sense you will, you need to either get

1 closer to your microphone or raise your voice.

2 MR. MOORE: Will do.

3 JUDGE GILBERT: Okay. Mr. Rooney.

4 MR. ROONEY: Yes, your Honor. I didn't gather
5 Mr. Harvey's comment as being the initiation of the
6 rule making proceeding that I think what Mr. Moore
7 eluded to.

8 We're supportive of Mr. Harvey's
9 proposal to go through a verified comment to deal
10 with the single question that is before the
11 Commission and pursuant to this docket. And at this
12 point, Commonwealth Edison Company doesn't consider
13 this case in and of itself to be a rule making
14 proceeding.

15 I defer to Staff at this point to the
16 extent that this case is premised upon Staff's report
17 to the Commission.

18 MR. HARVEY: I think that there's, perhaps, a
19 little bit of a disconnect on this, and I don't think
20 it's between necessarily me and Mr. Rooney, but it
21 may just be that the way that this case -- the way
22 that the Staff report was brought was -- you know,

1 opened this as a rule making for the sort of
2 streamlining of the procedure, rather than the
3 absolute need to make administrative rules.

4 I think that -- I mean, at this point,
5 Staff does not intend to propose a rule. We view
6 this case as essentially exactly what the statute
7 calls for. The Commission is charged with conducting
8 an investigation in accordance with the federal
9 statute to determine whether it is appropriate to
10 implement the standards of 16 United States Code 2621
11 for, you know, time-based metering and certain
12 realtime pricing. And that's what I think this
13 proceeding is about anyway.

14 I could see that it might evolve into
15 a rule; it might not. It might evolve into a
16 determination that no rule is necessary because
17 compliance with the appropriate statutory guidelines
18 has been achieved already in Illinois through
19 compliance with the state statute for those utilities
20 that are squarely before the Commission.

21 I don't think that there is
22 necessarily -- and I'm not prejudging it. I don't

1 know that that's the way it will fall out, but it
2 seems to be very possible that one of the results of
3 this Commission's -- this proceeding is that the
4 Commission could determine, Hey, we've done it
5 already. And, you know, I don't want to prejudice
6 anybody's -- or, you know, have any preconceptions
7 about this. But I think that is a distinct
8 possibility that we could decide that we've already
9 done this, and the outcome of this proceeding is an
10 order that says, Hey, well done, you know, we've
11 conducted an investigation.

12 MR. MOORE: Judge, this is John Moore --

13 JUDGE GILBERT: Yes.

14 MR. MOORE: -- again, for the ELPC. Could you
15 explain to me the process through the verified
16 comments, something like this. And it sounds to me
17 like what Staff is saying it might be good to
18 proceed, at least initially, through proceeding
19 comments from the parties in the case. I just don't
20 know what the process would then look like.

21 JUDGE GILBERT: Well, I think the question that
22 you're asking, Mr. Moore, actually touches on what I

1 think are the underlying themes that Mr. Harvey and
2 Mr. Rooney are talking about. And, in turn, those
3 connect to some of my own thoughts about the case.
4 And eventually I'll get back to actually trying to
5 answer your question.

6 But noting what the Commission has
7 required in the initiating order of the case -- I
8 don't know if it was Mr. Harvey or Mr. Rooney who
9 noted there was a single substantive ordering
10 paragraph. And that unless the determination as to
11 whether or not the Commission will or ought to adopt
12 a standard, and that's also reflected in the 585 of
13 that order.

14 When I received this and read the
15 order, I was wondering why the case was cast as a
16 rule making and then framed a single essentially yes
17 or no question as to whether the Commission should
18 adopt a standard. And I think Mr. Harvey has
19 suggested that the reason was more for procedural
20 streamlining rather than because a set of rules was
21 contemplated.

22 On the other hand, as I sort of

1 thought through and logically it occurred to me that
2 the question whether or not you adopt a standard may
3 be dependant on the specific standard you propose to
4 adopt. I think that one can play with the variables
5 either to make it clear that a standard would not be
6 appropriate or that a standard would be appropriate.
7 And I think that differences among the parties may be
8 in what factors out to be considered and how they
9 ought to be weighed.

10 So it's conceivable that the
11 Commission's intention here is to either have a "yes"
12 answer to the question it poses with the inclusion of
13 a set of rules that demonstrate why it's appropriate
14 to have a standard and how that standard will be
15 implemented. Or, alternatively, to say "no" that
16 there is no standard that can be developed-based on
17 the evidence presented that can be reflected in a
18 rule making.

19 And then as an additional question, as
20 raised by Mr. Harvey, is the question whether there's
21 already a basis for the exception under 16 U.S.C.
22 2622 for determining that the State is already active

1 legislatively. I don't know if there are any actual
2 Commission orders outstanding, but I know the State
3 has acted legislatively with respect to realtime
4 pricing and that meets the comparable standard test
5 under the federal act. In which case, then the
6 answer would clearly be "no" and we don't proceed any
7 further.

8 So I'll just throw that out there.

9 So, therefore, getting back to your initial question
10 as to whether we would have a comment period, I think
11 we'd have to shape the comment period as to what
12 we're talking about. And it seems like we might be
13 getting into a preliminary question of whether the
14 1622 exception -- I'm sorry, the 2622 exception has
15 been satisfied or whether any party believes there is
16 no circumstance under which the standard can be
17 developed.

18 MR. DEBROFF: Your Honor?

19 JUDGE GILBERT: Yes.

20 MR. DEBROFF: Hi, this is Scott DeBroff, again.
21 It might be helpful if you wouldn't mind if I give
22 you a quick roundup of how this sometimes shapes out.

1 I'm in about 18 states right now in impact-related
2 smart metering proceedings so --

3 JUDGE GILBERT: Okay. Let me interrupt you for
4 just a moment, and ask you if you get could get
5 closer to your mike or your phone or speak a bit
6 louder. I don't mean to make your voice -- but I am
7 having trouble hearing you.

8 MR. DEBROF: Can you hear me better now?

9 JUDGE GILBERT: Yeah, it's a little better.

10 MR. DEBROF: How's that?

11 JUDGE GILBERT: Yeah, that's much better.

12 MR. DEBROF: Great. Currently, I am in about
13 18 different states on impacted-related (voice fading
14 in and out)...

15 JUDGE GILBERT: Mr. DeBroff, I have to
16 interpret you again, I'm sorry. It's just the limits
17 of our technology here. For a moment there, you were
18 loud and clear, but you faded out again.

19 MR. DEBROF: How's that?

20 JUDGE GILBERT: That's better. See if you can
21 hold it there.

22 MR. DEBROF: How's that? Is that better?

1 JUDGE GILBERT: Barely. You might to have to
2 just start screaming.

3 MR. DEBROF: Okay. I will.

4 I'm currently in 18 impact-related
5 smart metering proceedings across the country. And I
6 could probably give you a very quick and dirty idea
7 that there is no standard in any state for how to
8 proceed in these types of cases. And I think of all
9 of (inaudible) so far have basically described a
10 version of how different states have handled a
11 limitation of the advanced meter and reflecting back
12 in the law.

13 The one thing I would want to mention
14 is the implementation of 1252, you know, of course,
15 relates back to PURPA. And if you go back into PURPA
16 from 78, there is actually a procedure that outlines
17 pretty specifically in terms of how states must
18 respond to different requirements of the utilities
19 that ended right before the five new provisions in
20 the 2005 law.

21 So there actually is a way to do it
22 and it's spelled out specifically. But what's very

1 interesting about the state-to-state development is
2 it just varies, and there is no rhyme or reason.
3 Comments on this example were taken in Virginia.
4 Only comments on the record they had facilities,
5 they've had -- not substantial time of use or time of
6 day care of property, but they had a little bit and
7 the Commissions viewed that as not to satisfied
8 the (inaudible) preexisting tariff. Yet, in probably
9 three times the number of states there are issues
10 around how to do limitations even when there are time
11 of day rates or time of use tariff (inaudible)
12 facilities.

13 So I'm not here really to tell you
14 exactly how to do it, but I can tell you what it
15 seems most typical is some variety of notice comment
16 period via introductory to a period of questions
17 which is how probably a quarter of the states have
18 been operated on (inaudible) the proceeding. And
19 following some type of response to a series of kind
20 of standard questions about, you know, what kind of
21 offering exist there were questions around, you know,
22 what do utilities do? How in depth are their smart

1 metering initiatives or their tariff offerings? The
2 fact that they're customer (inaudible). And then
3 following some type of introductory question, it's
4 very common to hold some type of technical conference
5 to have an opportunity to discuss -- you're right --
6 to discuss the technology side of it. Certainly, I
7 think this differs from what has been happening till
8 today. And then most people go to that section to
9 look and see exactly what, you know, the requirements
10 are. And it's really -- it does -- doesn't force the
11 utilities to do something based on their already
12 having ordered something.

13 And I know that Illinois has that, but
14 they've done some, developed habits of certain
15 tariffs and have facilities and there are
16 (inaudible) that have been operated for a number of
17 years and have been doing so successfully. On the
18 other hand, there is a requirement, if you read the
19 law specifically, it does say that there aren't those
20 specific proceeding that would address time, date,
21 and rate schedule. And that's something that has to
22 be considered.

1 So in some -- you know, I take it a
2 little bit, you know, on the face of law, but then I
3 also have seen how that has kind of been twisted in
4 different states and how different Commissions have
5 interpreted that. My only comment is I think that
6 there is significant technology issue to be
7 developed. And I think, you know, whether it's
8 comments or an opportunity to discuss the technology
9 advances, I think those are a great way -- or a
10 combination of ways, whether it's a hearing process,
11 a meeting, or what have you, I think that's certainly
12 going to be in the specific issue for what utilities
13 in Illinois are currently doing. And I know a number
14 of them have different programs and different
15 technologies.

16 I think any kind of hearing or comment
17 process, you know, that somewhat bends to what
18 utilities are doing and, perhaps, even what their
19 plans might be. But I think it does come down to
20 more than just a legal process. And my clients are
21 all over the country on these matters and how we have
22 those relationships with facilities in Illinois.

1 And so I think there is certainly a
2 (inaudible) to look at those things utilities would
3 like to see. But also in that process, you know,
4 there is certainly an examination and not just, you
5 know, is there a tariff offering available to the
6 customer but also what level of technology does that
7 utility employ and how would a rule affect either
8 existing meter and meter technology best and also how
9 would it affect any investment going forward.

10 So it is a complicated issue. I don't
11 know necessarily that just comments would solve the
12 issue as to what level of technology comes
13 (inaudible) what kinds of offerings are available.
14 That just kind of gives you a background for what
15 takes place in a number of states I've been working
16 in and --

17 JUDGE GILBERT: I feel somewhat constrained in
18 the case because it's been set up as a rule making
19 and the question has been posed which is not in and
20 of itself part of a set rules in order to answer it.
21 And I don't know if there's any party here who's
22 going to propose a set of rules for us to begin

1 discussing -- actually, let me ask that question.

2 Is there anyone here who intends to
3 propose a set of rules?

4 MR. HARVEY: I would note for the record, your
5 Honor, that Staff, who is the party that generally is
6 expected to draw the sort of preliminary straw man
7 rules on any rulemaking does not intend at this point
8 to propose rules in this proceeding.

9 MR. ROONEY: And ComEd, your Honor, has at this
10 point no plans of offering up a set of rules that are
11 focusing on the question as you identified in the
12 ordering paragraph at this point.

13 MR. MOORE: Judge, this is John Moore from
14 ELPC, again. I was wondering if it would be
15 worthwhile to have the parties submit something to
16 you in a relatively short order putting down on paper
17 exactly what they believe the future of this
18 proceeding should be, whether or not it should be --
19 you know, what they believe exists in Illinois and
20 whether or not the existing tariffs out there
21 cover an all-time-of-day pricing and what more needs
22 to be done, if anything. So that -- it's just not

1 clear to me at all what needs to happen to move
2 forward.

3 MR. DEBROF: You know, John, to answer the
4 question (inaudible) and I'm wondering if one of the
5 utilities -- because I know a little bit about some
6 of the tariff offerings. I don't know all of them.

7 I was interested, does anyone know if
8 there is an actual tariff offering at the time of use
9 rates that offered upon every utility or are there
10 only selected utilities that offer that now?

11 MR. HARVEY: It is Staff's understanding
12 that the -- and I believe Mr. Schlaf from Springfield
13 on the technical staff, who is also on the phone,
14 correct me if I'm wrong -- all of the utilities that
15 were cited into this proceeding, it is Staff's
16 understanding, have some sort of time of use rate in
17 effect at this point by tariff. And I'm assuming
18 that since Mr. Schlaf has not spoken up and told me
19 that I'm wrong that that is a correct statement.

20 MR. SCHLAF: This is Eric Schlaf in
21 Springfield. That is my understanding. Each of the
22 utilities that are parties to the proceeding have a

1 time of use rate and realtime pricing rates or
2 something of that nature in effect; and additionally,
3 there are plans for realtime pricing rates for Ameren
4 facilities and ComEd 77 -- I think the utilities do
5 have some form of -- at least the utilities have some
6 form of time of use rate in effect or will have in
7 effect for 77.

8 MR. MOORE: Eric -- is that (inaudible) ComEd
9 and 77 for realtime pricing?

10 MR. SCHLAF: Yeah.

11 MR. MOORE: Is that -- just curious -- realtime
12 pricing or is that more like critical peak pricing?

13 MR. SCHLAF: As a consequence of the
14 procurement orders, which I think were entered into
15 in January, both Ameren utilities and ComEd will go
16 off realtime pricing. That is on pricing on an
17 hourly basis, not critical peak pricing, starting in
18 2007 for all of their customers.

19 MR. MOORE: Is that hourly same day or is it
20 hourly -- or is it next day?

21 MR. HARVEY: See, I think this may be sort of
22 getting to the point where we're getting into what

1 may be very well be contested issues.

2 JUDGE GILBERT: This is the preliminary
3 question which I think Mr. Moore was alluding to and
4 which I mentioned earlier with regard to the
5 exception under 2622, which essentially could end the
6 case right there, as to whether existing legislation
7 Commission orders, existing tariffs essentially meet
8 the comparable standard test of 2622. And that is
9 something that preliminarily we ought to look at.

10 Apart from that, though, down the
11 line, if the answer to that is that those existing
12 elements did not meet the comparable standard test,
13 we will have both policy or philosophical issues on
14 one hand, as well as I think some factual issues
15 about cost and cost effectiveness. And those kinds
16 of issues, if we get to address them, I think are
17 probably most appropriately dealt with through an
18 evidentiary hearing.

19 Does anyone at this point -- do any
20 parties at this point already intend to take the
21 position or have formed the position that existing
22 Commission orders, company tariffs, and Illinois

1 legislation meet the comparable standard test and
2 that the answer to the ultimate question posed by the
3 Commission here should be no, there's no need to
4 promulgate a new standard?

5 MR. ROONEY: Well, on behalf of Commonwealth
6 Edison Company, your Honor, Commonwealth Edison's
7 going to be in a position here very shortly within
8 the next few weeks of filing tariffs pursuant to the
9 recently enacted legislation under 16107 regarding
10 the RTP issue. And pursuant to the terms of the
11 statute, the Commission has 120 days in which to
12 consider in hearings whether or not that filing
13 comports with the RTP statutes. So from our
14 viewpoint, I think -- we think that their may be
15 other means in place that would not require further
16 activities or would fall within the exemption that
17 you identified.

18 MR. FITZHENRY: Judge, this is Ed Fitzhenry for
19 the Ameren Company. We're pretty much in step with
20 Commonwealth Edison Company on this. Currently,
21 we're looking at the comparable standard and while
22 we've not had final signoff, it does appear, at least

1 in our estimate, that either existing tariffs or by
2 virtue of what the law will require of the Ameren
3 Company that the comparable standard that would have
4 been met.

5 And listening to all the comments here
6 this afternoon, I am wondering if not the appropriate
7 course of action would be to call to the parties to
8 submit comments and then reply comments with regard
9 to this threshold issues -- that's how I view it
10 anyway -- and with the idea of getting an interim
11 order -- an interim order for the Commission, you
12 know, based on those comments and the reply comments.

13 The interim order could read that, you
14 know, based on the information provided to date, all
15 parties agree that the comparable standard has been
16 met or whatever the comments would reveal on behalf
17 of parties' position, and let the Commission decide
18 that something further should --

19 MR. ROONEY: I guess from ComEd's perspective,
20 we agree with that proposal from Mr. Fitzhenry. I
21 think it would also comport with the ordering
22 paragraph, your Honor, to make that initial decision

1 up front, an interim order, and then the Commission
2 can go from there.

3 MR. HARVEY: I guess Staff is inclined to agree
4 that that's a good way to determine wither this
5 proceeding goes. I suspect that given the fact that
6 this thing has to be ordered out in 11 months that we
7 probably don't want to take too long with that. But
8 it certainly would be one way to figure out what the
9 issues actually were here.

10 MR. MOORE: This is John Moore from the ELPC.
11 I agree.

12 JUDGE GILBERT: Well, two things. I mean, one
13 is that this is a threshold issue, I certainly agree
14 with that. It's not necessarily dispositive of the
15 question posed by the Commission in the ordering
16 paragraph, although it could be if it's determined
17 initially that the current Commission orders,
18 legislation, and tariffs, or those that will be put
19 in place in the near future, do not meet the
20 comparable standard test, we're still left with the
21 question of whether it's appropriate to adopt the
22 federal standard. We're not required to do that. So

1 while we would be eliminating one threshold question,
2 we wouldn't necessarily until that question is
3 answered, you know, that we're disposed of the case
4 as a whole.

5 The another issue -- and I think
6 Mr. Harvey just mentioned that -- is that this time
7 limit here -- and if I understood Mr. Rooney -- we've
8 got potentially several months before we'll know if
9 ComEd's and Ameren's tariffs have been approved in
10 order for us to determine whether those approved
11 tariffs are sufficient part of a mosaic that
12 satisfies the comparable standard test.

13 MR. ROONEY: Your Honor, for Commonwealth
14 Edison with one clarification, and Mr. Schlaf alluded
15 to it with regard to ComEd, is that there are already
16 certain RTP requirements that come out of the
17 procurement case that may already fit to that mosaic
18 as well and meet the existing examination under
19 PURPA.

20 JUDGE GILBERT: Okay. So you're suggesting you
21 would meet that test even without the additional
22 tariffs that you're going to be proposing pursuant to

1 the change in Illinois law?

2 MR. ROONEY: Right. Pursuant to the
3 procurement case --

4 JUDGE GILBERT: Right.

5 MR. ROONEY: -- order for ComEd.

6 MR. HARVEY: I believe that the utilities in
7 all cases have realtime pricing tariffs in effect
8 pursuant to Section 16-107, although, again,
9 Mr. Schlaf could certainly correct me if that's
10 inaccurate.

11 MR. MOORE: Your Honor, this is John Moore, and
12 in my view, I think it would have a relatively
13 straightforward, if not necessarily simple matter, of
14 the parties assessing the universe of existing
15 metering and pricing option tariffs that exist in
16 Illinois together with what's required by the 16-107
17 and opining on whether or not any additional action
18 is necessary per the energy --

19 JUDGE GILBERT: Well --

20 MR. MOORE: I didn't say it was simple, but I
21 did I say it was relatively straightforward to get
22 some comments on that.

1 JUDGE GILBERT: Yeah, I mean, in general I
2 agree, and we need to do something or another order
3 to get the case moving. I feel that I'm taking
4 something of a risk that if we do get to a point of
5 addressing other questions beyond the comparable
6 standards test and if we get to the further point of
7 having to adopt some specific rules, we may be very
8 pressed for time in order to accomplish that. Now,
9 I'm assuming that I won't encounter the philosophical
10 argument that it's appropriate to have
11 time-of-day-pricing or realtime pricing or anything
12 of nature. I mean, those things are here anyway. So
13 I'm assuming that the kinds of arguments we could
14 potentially encounter somewhere down the line would
15 be about costing issues.

16 In any event, we've got to do
17 something here, so let's go ahead as proposed and
18 let's try to propose the questions clear enough that
19 everyone knows what they're doing. And let me give a
20 moment to framing that.

21 All right. Well, I think what we're
22 addressing then is where subsection small "e" of 16

1 U.S.C. 2622 would either mandatorily preclude the
2 Commission or on a discretionary basis, discourage
3 the Commission from answering the question posed in
4 the first ordering paragraph of the initiating order
5 in the case in the affirmative. I hope that was
6 clear because it took me a while to put that
7 together.

8 And stating that more practically,
9 it's whether or not 2622 sub e compels us or
10 recommends to us that the case ought to stop here and
11 that there's no need for the State to adopt
12 additional standards pursuant to 2621 and 2625.

13 Some of you are probably way ahead of
14 me on this anyway, but are those marching orders
15 clear enough for folks to write what they have to
16 write?

17 Does anyone want to clarify or want to
18 ask a question?

19 MR. MOORE: Your Honor, it's John Moore, again.
20 I think that's good. I only add that obviously if a
21 party feels that the answer is no, it's not
22 sufficient, that they would be expected to explain

1 what at a minimum -- that that's required.

2 JUDGE GILBERT: All right. So you're saying
3 that if the --

4 MR. MOORE: I think it's like, if not, why not,
5 and what programs would -- if not, why not and
6 obviously something has to happen. What level of
7 detail they want to get on. What kind of programs do
8 they think or tariffs are necessary.

9 JUDGE GILBERT: Well, I think implicit in the
10 directive to address about the comparable standards
11 test is the idea that you're going to have to say why
12 you believe the comparable standards test is either
13 met or not met.

14 Do I understand you to be saying that
15 if a party takes a position that the comparable
16 standards test is not met that they should propose an
17 alternative?

18 Did I misunderstand you.

19 MR. MOORE: No, I think that's right. I think
20 that's right.

21 JUDGE GILBERT: All right. Well, let's put it
22 this way: If you take the position that the

1 comparable standards test has not been met and you
2 believe that the Commission does need to adopt an
3 appropriate standard under the revised version of
4 PURPA, that you would so state and at least, in
5 general, describe what you believe the next actions
6 should be.

7 Any other comments or questions?

8 Okay. Let's go off the record and
9 create a schedule for this.

10 (Whereupon, a discussion was had
11 off the record.)

12 JUDGE GILBERT: All right. We've established
13 the following schedule: The parties will file their
14 initial comments on September 27th by the close of
15 business, and the reply comments at close of business
16 on October 18th. And then we should probably set a
17 status hearing, which I didn't address while we were
18 off the record, but how about October 25th? Does
19 anyone have a problem or something -- let's say,
20 11:00 a.m. or 1:00 p.m. on the 25th?

21 MR. HARVEY: Staff could do either of those,
22 your Honor.

1 MR. ROONEY: That's fine. ComEd.

2 JUDGE GILBERT: Any problems?

3 All right. I've heard none, so
4 October 25th at 11:00 for a status hearing and we'll
5 see where we are after all those things have been
6 filed.

7 MS. STEWART: Your Honor, is there any
8 objection to having the status hearing held by
9 conference call again?

10 JUDGE GILBERT: I think I heard the question,
11 and the very fact that I'm not sure I think, in part,
12 answers your question. You asked me if I have any
13 concern about doing this telephonically again?

14 MS. STEWART: Correct.

15 JUDGE GILBERT: Let me say no right now. I
16 want to talk to the folks who take care of our
17 technology in here because I'm really having trouble
18 hearing what you're saying and I think the court
19 reporter is as well, in fact, she's nodding her head
20 yes.

21 If at all possible, I don't want to
22 make you have to come into Chicago for this; but if I

1 can't get this system improved to where I hear you
2 clearly and the court reporter can hear you clearly,
3 we're going to have to have you come in. So for now,
4 we're assuming you do not have to and you can
5 participate by telephone; but if I have to change
6 that, I'll let you know.

7 MR. HARVEY: Your Honor, if I might suggest
8 maybe we can convenient this in N808. We seem to
9 always be able to hear reasonably well in there.

10 JUDGE GILBERT: Yeah, now that I see that we
11 don't have a capacity crowd, it probably would make
12 sense to use the smaller room, and it may solve our
13 problem. So anyway, the answer for now is it's fine
14 to participate by telephone. And if I have change
15 that I'll let you know.

16 So we're continued until October 25th
17 at 11:00 a.m. Thank you.

18 (Whereupon, the above-entitled
19 matter was continued to October
20 25th, 2006, at 11:00 a.m.)

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22